

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of  
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

STANLEY T. MILLER,

Defendant.

Adv. Pro. No. 10-04921 (CGM)

**DECLARATION OF ARTHUR H. RUEGGER IN SUPPORT OF DEFENDANT' S  
CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION  
TO TRUSTEE'S MOTION FOR SUMMARY JUDGMENT**

I, Arthur H. Ruegger, do hereby declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, as follows:

1. I am Senior Counsel in the law firm of Dentons US LLP, counsel to Defendant Stanley T. Miller (the "Defendant").

2. I make this Declaration pursuant to Federal Rule of Bankruptcy Procedures 7056 and Local Rule 7056-1 in support of the Defendant's cross motion for summary judgment and in

opposition to the motion for summary judgment filed on April 14, 2021 by Irving H. Picard (the “Trustee”), the Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) against Defendant.

3. I have reviewed the court documents referenced herein, which include documents from the official record of this adversary proceeding in the Bankruptcy Court (*Picard v. Miller*, Adv. Proc. No. 10-04921 (CGM)), the record in the United States District Court for the Southern District of New York of this adversary proceeding (*Picard v. Stanley T. Miller*, 11 Civ. 7579 (JSR) (S.D.N.Y. Jan. 25, 2012)), the record of the main case for BLMIS (*Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC*, Adv. No 08-01789 (SMB) and certain transcripts from the criminal proceedings against Bernard L. Madoff (“Madoff”) and employees of Madoff’s businesses. I have also reviewed certain documents with respect to transactions in the individual retirement account opened by the Defendant and Madoff’s operations, produced by the Trustee in discovery and bearing the bates-stamped numbers of the Trustee’s data room and the production of third parties, including the production of Retirement Accounts, Inc., also known as NTC & Co. and Fiserv (“Retirement Accounts”), bearing the “FISERV-MILLER” identification stamp.

4. Attached hereto as Exhibit A is a true and correct copy of the complaint initiating the adversary proceeding. Initial Complaint, *Picard v. NTC & Co. LLP et al.*, Adv. Pro. No. 10-04921 (SMB) (Bankr. S.D.N.Y. Dec. 2, 2010) [ECF No. 1].

5. Attached hereto as Exhibit B are true and correct copies of the documents dated October 21, 1998, bearing bates numbers AMF00115386-AMF00115393, establishing the Defendant’s account, assigned Account No. 1ZR284, opened with the Madoff sole proprietorship (“Madoff Securities”), Bernard L. Madoff Investment Securities, in November 1998.

6. Attached hereto as Exhibit C are true and correct copies of the documents dated October 21, 1998 and November 4, 1998, the second page bearing bates number AMF00115394, regarding the opening of the account for the Defendant's individual retirement account ("IRA") with Retirement Accounts (the "RAI IRA Account").

7. Attached hereto as Exhibit D are true and correct copies of credit memos from Madoff Securities to Retirement Accounts evidencing deposits of principal made by Retirement Accounts to the RAI IRA Account in the amounts of \$3,000,000.00, \$93.00, \$499,990.00 and \$499,907.00.

8. Attached hereto as Exhibit E are true and correct copies of trading instructions and requests to Madoff Securities (specifically, Bernard L. Madoff) for withdrawals from the RAI IRA Account made by Retirement Accounts bearing bates-stamp numbers AMF00115290-381.

9. Attached hereto as Exhibit F are true and correct copies of checks<sup>1</sup> made payable to Retirement Accounts (or one of Retirement Accounts' other names, NTC & Co.) from the JP Morgan Chase Account No. 6301428151 509 in the name of Bernard L. Madoff (the "509 Account"). To the best of my knowledge and information, all of the checks that were paid on account of the RAI IRA Account were made to the order of Retirement Accounts and written on the same Madoff account. The checks bear the various JP Morgan bates-stamp numbers.

10. According to the endorsements that are legible on the back of the checks, until 2007 the checks were deposited in a Wells Fargo (or Wells Fargo West) bank account in Denver, and thereafter the checks were deposited in JP Morgan Chase Account No. 1190057 in Texas, which, based on information and belief, was a Retirement Accounts bank account.

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<sup>1</sup> The attached copies show the back of the checks, which show the endorsement of the check for deposit of the checks in a Denver branch of Wells Fargo through 2007 and thereafter a Retirement Accounts bank account in Texas.

11. Attached hereto as Exhibit G are true and correct copies of a sample of Retirement Accounts' IRA Distribution Request Forms and electronic transfer requests evidencing certain of the Defendant's requests to Retirement Accounts for distributions from the RAI IRA Account bearing various FISERV-MILLER bates stamps. To the best of my knowledge and information, all of the requests to Retirement Accounts were written on the same form, made by handwritten request or made by telephonic and electronic notification.

12. Attached hereto as Exhibit H are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from October 1, 1998 through March, 1999 bearing FISERV-MILLER bates-stamped numbers 00533 through 00536.

13. Attached hereto as Exhibit I are true and correct copies of the quarterly account statements for the RAI IRA Account for the period from April 1, 1999 through June 30, 2002 bearing FISERV-MILLER bates-stamped numbers 00537 through 00571.

14. Attached hereto as Exhibit J are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from July 1, 2002 through December 31, 2002 bearing bates-stamped numbers FISERV-MILLER 00115 through 00119.

15. Attached hereto as Exhibit K are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from January 1, 2003 through December 31, 2003 bearing bates-stamped numbers FISERV-MILLER 00016 through 00027 and for the period from January 1, 2004 through December 31, 2004 bearing bates-stamped numbers FISERV-MILLER 00028 through 00040.

16. Attached hereto as Exhibit L are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts (then called Fiserv) for the period from January 1, 2005 through December 31, 2005 bearing bates-stamped numbers FISERV-MILLER 00041 through 00061.

17. Attached hereto as Exhibit M are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from January 1, 2006 through December 31, 2006 bearing bates number FISERV-MILLER 00062 through 00074.

18. Attached hereto as Exhibit N are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from January 1, 2007 through December 31, 2007 bearing bates-stamped numbers FISERV-MILLER 00075 through 00095.

19. Attached hereto as Exhibit O are true and correct copies of the quarterly account statements for the RAI IRA Account sent to the Defendant by Retirement Accounts for the period from January 1, 2008 through December 31, 2008 bearing bates-stamped numbers FISERV-MILLER 00096 through 00114.

20. Attached hereto as Exhibit P are true and correct copies of the account statements sent by Citco Fund Services (Cayman Islands) Ltd. to Retirement Accounts evidencing an investment in Austin Capital Safe Harbor Offshore Fund ("Austin Capital") made by Retirement Accounts for the Defendant, bearing various FISERV-MILLER bates-stamped numbers.

21. Attached hereto as Exhibit Q are true and correct copies of a sample of record logs evidencing inquiries from the Defendant regarding his RAI IRA accounts, bearing various FISERV-MILLER bates-stamped numbers.

22. Attached hereto as Exhibit R is a true and correct copy of a note of communications with Madoff Securities regarding a missing check that had not been received by Retirement Accounts and was cancelled by the Defendant bearing bates-stamped number AMF00115339.

23. Attached hereto as Exhibit S are true and correct copies of Form 1099-R for the years 2001 through 2008, sent by Retirement Accounts to the Defendant evidencing distributions made by Retirement Accounts to the Defendant from the RAI IRA Account, certain pages bearing bates-stamped numbers FISERV-MILLER 00138 through 00144.

24. Attached hereto as Exhibit T is a true and correct copy of an internal memorandum from Retirement Accounts discussing the timing of its requests for withdrawals from Madoff Securities with distributions to the Defendant by Retirement Accounts, bearing bates-stamped number FISERV-MILLER 00622.

25. Attached hereto as Exhibit U is a true and correct copy of the of the transcript dated March 12, 2009, guilty plea of Madoff to the eleven-count criminal information filed against him, including charges of securities fraud, investment adviser fraud, mail fraud, wire fraud, three counts of money laundering, false statements, perjury, making false filings with the SEC, and theft from an employee benefit plan. March 12, 2009 Hr'g Transcript, *United States v. Madoff*, No. 09 CR 213 (DC) ("Madoff Allocution").

26. Attached hereto as Exhibit V is a true and correct copy of the transcript of the guilty plea of Peter Madoff dated June 29, 2012, *U.S. v. Madoff*, 10 CR 228 (LTS) ("P. Madoff Allocution"). On June 29, 2012, Peter Madoff pleaded guilty to participating in a conspiracy to: (1) commit securities fraud; (2) falsify books and records of an investment adviser; (3) falsify books and records of a broker/dealer; (4) make false filings with the United States Securities and Exchange Commission; (5) commit mail fraud; (6) falsify statements in relation to documents

required by ERISA, the Employee Retirement Income Security Act; and (7) obstruct or impede the lawful government functions of the Internal Revenue Service in the ascertainment, assessment, computation and collection of taxes and with falsifying the books and records of investment advisor.

27. Attached hereto as Exhibit W is a true and correct copy of the SEC Form BD dated December 31, 1959, filed by Madoff to register as a broker-dealer with the SEC.

28. Attached hereto as Exhibit X is a true and correct copy of the Articles of Organization filed with the New York State Department of Corporations evidencing the registration of BLMIS, a limited liability company. MADTSS01160346-49.

29. Attached hereto as Exhibit Y is a true and correct copy of the Amended Uniform Application for Broker-Dealer Registration, Form BD, filed with the Securities and Exchange Commission (the "SEC") on or about January 12, 2001.

30. Attached hereto as Exhibit Z are true and correct copies of the following letters all dated January 1, 2001 advising the recipient about the formation of the limited liability company:

- a. An unexecuted letter from BLMIS and the sole proprietorship to the Bank of New York (MESTABL00005744);
- b. A letter from BLMIS and the sole proprietorship to the National Securities Clearing Corporation (MADTEE0054444380);
- c. A letter from BLMIS and the sole proprietorship to the Options Clearing Corporation (MADTEE00544725); and
- d. A letter from BLMIS and the sole proprietorship to the Depository Trust Company ("DTC"), accompanied by a letter from a BLMIS lawyer (MADTEE00544722-24).

31. Attached hereto as Exhibit AA is a true and correct copy of the Uniform Application for Investment Advisor Registration, Form ADV filed with the SEC in January 2008.

32. Attached hereto as Exhibit BB are true and correct copies of JPMorgan Chase Bank, N.A. statements for account #xxxxxx1703 for November 2000 (MADWAA00242269-350); January 2007 (JPMSAB0003510-580 and October 2008 (JPMSAB0004455-504).

Dated: May 12, 2021  
New York, New York

ARTHUR H. RUEGGER

/s/Arthur H. Ruegger